

NEWMAN, WILLIAMS, MISHKIN, CORVELEYN, WOLFE & FARERI, P.C.  
A PROFESSIONAL CORPORATION

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Attorney for Defendants: Donna Asure, Christopher Okula, and  
Jeremy Storm

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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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MATTHEW KATONA,

Plaintiff

v.

DONNA ASURE, et al.,

Defendants

No. 11-CV-1817

Judge Rambo

M.J. Mannion

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**Defendants' Motion to Partially Dismiss Amended Complaint Pursuant to  
Fed.R.Civ. P. 12(b)(6) on behalf of Defendants, Donna Asure, Christopher  
Okula, and Jeremy Storm**

The defendants, Donna Asure, Christopher Okula, and Jeremy Storm, move to partially dismiss the plaintiff's Amended complaint for the following reasons:

1. Plaintiff, Matthew Katona ("Katona"), an inmate presently confined at the State Correctional Institution at Coal Township ("SCI-Coal Township") in Coal Township, Pennsylvania, initiated the above action *pro se* by filing a complaint under the provisions of 42 U.S.C. § 1983.

2. Katona was an inmate at the Monroe County Correctional Facility (“MCCF”) housed in the Restrictive Housing Unit (“RHU” or the “unit”) of the prison. (Doc. 1, ¶9).

3. On February 23, 2011, correctional officer defendants, Christopher Okula (“Officer Okula”) and Jeremy Storm (“Officer Storm”), were assigned to supervise the unit.

4. Katona claims Officer Storm approached his cell and called him a “fake white muslim” and told Katona he could “suck [his] d\*ck like the big (sic) boyz make you do it up state.” (Doc. 71, ¶11).

5. Officer Storm then allegedly entered Katona’s cell and again called him a “fake white muslim” before knocking a kufi<sup>1</sup> off of Katona’s head. (Doc. 1, ¶ 14).

6. Thereafter, Katona claims Officer Storm punched him in the eye causing the eye to split and bleed. (Doc. 71, ¶ 15).

7. Katona claims he lunged at Officer Storm in self-defense. (Doc. 71, ¶ 18).

8. Katona claims that Officer Okula injured him while handcuffing him after he attacked Storm. (Doc. 71, ¶ 20).

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<sup>1</sup> A close-fitting brimless cylindrical or round hat. <http://www.merriam-webster.com/dictionary/kufi>.

9. Shortly thereafter, additional jail personnel arrived at the RHU including defendant, James Shea — a Sergeant at MCCF at the time of this alleged incident. (Doc. 1, ¶ 22).

10. Katona claims defendant Shea kicked him while restrained.

11. The Court must accept as true all of the aforesaid factual allegations from the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to Katona. Kanter v. Barella, 489 F.3d 170, 177 (3d Cir. 2007).

12. Plaintiff fails to state a cause of action relating to the following claims:

- a. All claims against Warden Asure who was not present at the time of the alleged assault and had nothing to do with this incident;
- b. All claims for injunctive relief against all defendants since Katona is no longer incarcerated at the MCCF.

13. The basis for this motion is more particularly set forth in the defendants' supporting brief.

WHEREFORE, the defendants, Donna Asure, Christopher Okula, and Jeremy Storm, request that her motion be granted and that the plaintiff's amended complaint be partially dismissed.

Respectfully submitted,

**NEWMAN, WILLIAMS, MISHKIN  
CORVELEYN, WOLFE & FARERI, P.C.**

/s/ Gerard J. Geiger, Esq.  
Attorney I.D. #44099

Date: July 4, 2012

### **Certificate of Service**

I hereby certify that a copy of the foregoing document was served upon plaintiff on this date at the address listed below via 1<sup>st</sup> class mail:

Matthew Katona  
JP-3463  
SCI-Coal Township  
SPECIAL MAIL - OPEN ONLY IN THE PRESENCE OF THE INMATE  
1 Kelley Drive  
Coal Township, PA 17866-1021

A copy was also served on the attorney for defendant Shea via ECF.

**NEWMAN, WILLIAMS, MISHKIN  
CORVELEYN, WOLFE & FARERI, P.C.**

/s/ Gerard J. Geiger, Esq.  
Attorney I.D. #44099

Date: July 4, 2012